

REMARKS/ARGUMENTS

Claims 1, 2, 4, 5, 7-16 and 18-28 are currently pending. Claims 1, 2, 4, 5, 7-16 and 18-28 stand rejected. By this amendment, claims 1, 2, 7, 8, 11-13, 15, 16, 22 and 26 are amended. Specifically, claim 1 is amended to recite a device for protecting the back of a wearer's by hanging downwardly and unfastened from under any head covering worn by the person to approximately the person's first thoracic vertebra. Support for this limitation is found throughout the specification, and particularly on page 4, lines 3-5, and page 5, lines 18-20.

Independent claim 16 is amended to recite a free-hanging substrate originating from under a helmet worn by the wearer and extending to the wearer's first thoracic vertebra. Support for this added limitation is found on page 6, lines 14-19.

Independent claim 22 is amended to recite an unfastened, free-hanging depending end.

Depending claims are amended to rectify antecedent basis concerns by the Examiner.

Applicant's invention

The instant invention comprises a light-weight back of the neck protection device. The invention comprises a *free-hanging*, pliable outer substrate which protects the wearer's neck and absorbs impact forces over a large area. The device can be *worn underneath any head covering* (such as a helmet), but can also be worn alone. Unlike the art of record, the present invention is intended for all classes of users, including those that are wearing nothing more than a t-shirt, or even no upper body covering at all. The art of record does not anticipate or suggest the instant invention inasmuch as said art must be worn outside of a football helmet so as to restrict neck movement and prevent whiplash.

Claim Objections

Examiner had objected to lack of antecedent basis for "the second substrate" in claims depending from claim 1. Element "second substrate" is now incorporated into claim 2, thereby providing the basis for use of the element in subsequent dependant claims. Further, Examiner requested the correction of dependant claims 13 and 26,

which now depend on claim 2 and not the heretofore cancelled claim 3. Finally, Applicant has corrected the typographical error in claim 1.

Hartunian Worn Outside Helmet;
Hartunian Not Freehanging

Claims 1, 2, 7-12, 14, 21, 24-26 are rejected under 35 U.S.C. §102 as anticipated by U.S. Patent 6,058,517 to Hartunian. However, anticipation under 35 U.S.C. §102(b) requires "the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."¹ Applicants submit that Hartunian does not disclose each and every element of the independent claims as now more clearly defined.

First, Hartunian does not anticipate or suggest a free-hanging substrate. Instead, depending surfaces of Hartunian are required to engage the shoulder pads of the wearer. This is because Hartunian (as does Douglas, discussed below) attempts to rectify cantilever effect (a.k.a. whiplash) in football players. Specifically, upon collision with another player, the bottom surface 12 of Hartunian "digs into the wearer's shoulder pads 3 thereby reducing rotation and protecting the neck." Column 4, lines 18-21.

Secondly, Hartunian must be worn outside of a helmet. The instant device, as now claimed, extends from underneath any head covering of a wearer, be it a helmet, a baseball cap or a scarf.

Thirdly, Hartunian limits the range of motion so as to prevent injury during impact. Figure 10 of Hartunian shows Hartunian invention's response to application of a lateral bending force while Figure 11 shows the response upon application of an axial compression force. In either event, Hartunian immobilizes the wearer's head. Given that Hartunian is designed to immobilize the wearer's head when force is applied, it would also limit the range of movement that originates with the wearer himself or herself and not an external force.

Applicant respectfully submits that the present invention is not anticipated by Hartunian. In light of the foregoing, withdrawal of Hartunian as a 35 U.S.C. §102 reference is respectfully solicited.

¹ *Lindermann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)).

Hartunian-Douglas Combination
Impermissible Hindsight

Claims 13, 15-16, 18-20, 22-23, and 27-28 are rejected under 35 U.S.C. §103 as being unpatentable over the combination of Hartunian and U.S. Patent No. 5,483,698 (hereinafter "Douglas"). In light of the traversal of Hartunian supra, Applicant submits that this rejection is now obviated.

Additionally, Applicant disagrees with the Examiner's contention on page 4, paragraph 8 of the Official Action that Douglas facilitates "unimpeded motion." First, Douglas is entitled "Helmet Support and *Movement Restrictor*." (emphasis added). As can be noted in FIG. 8 of Douglas, upwardly extending substrate 14, situated external of a helmet, "H", serves to prevent the helmet from extending backward. The purpose of Douglas is to restrict movement, while the present invention is intended to maintain freedom of movement.

Second, applicant disagrees with the Examiner's combination of Hartunian and Douglas. Specifically, and as stated in column 3, lines 5-8, Hartunian states that its brace be:

self-contained and not fastened to the shoulder pads, helmet or any vests. By not being attached to the shoulder pads, forces on the pads are not readily transferred to the neck or head.

Douglas, on the other hand, requires fastening of its device to shoulder pads. See, for example, Douglas Fig. 3 and Douglas Col. 4, Lines 1-5.

Neither Hartunian nor Douglas alone or together disclose depending, free-hanging substrates. In addition, neither Hartunian nor Douglas alone or together disclose substrate which extends from underneath any head covering of a wearer.

In light of the foregoing, applicant requests withdrawal of the rejections based on 35 U.S.C. 103, and allowance of claims 13 and 15.

Claims 4 and 5 are rejected under 35 U.S.C. § 103 as unpatentable in light of a combination of Hartunian and U.S. Patent 5,557,807 (hereinafter "Hujar.")

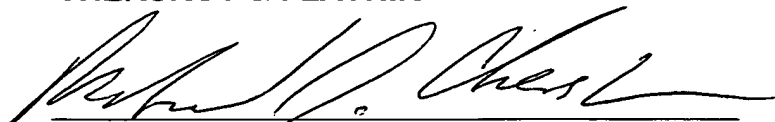
Applicant submits that in light of the traversal supra of the Hartunian art, this Hartunian-Hujar combination is obviated.

An earnest attempt has been made hereby to respond to the November 27, 2007 Official Action in the above identified matter. Applicant submits that the application is now in condition for allowance. If the Examiner feels that a telephonic interview will expedite allowance, she is respectfully urged to contact the undersigned. Claims 1,2, 4, 5, 7-16, and 18-28 are pending. Allowance is hereby solicited.

Dated: April 28, 2008

Respectfully submitted,

CHERSKOV & FLAYNIK

A handwritten signature in black ink, appearing to read 'Michael J. Cherskov', is written over a horizontal line.

Michael J. Cherskov
Reg. No. 33,664